

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THOMAS DENTON,

Plaintiff,

v.

FRED FIGUEROGA, et al.,

Defendants.

CASE NO. C10-1966 RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING CASE WITH  
PREJUDICE

This matter comes before the court on the Report and Recommendation of the Magistrate Judge. Dkt. 67. The court has considered the relevant record, including plaintiff's objections (Dkt. 68), defendants' response (Dkt. 69), and the remainder of the file herein.

On December 11, 2012, U.S. Magistrate Judge J. Richard Creatura issued a Report and Recommendation, recommending that this case be dismissed for plaintiff's failure to comply with court orders, failure to provide discovery, and failure to prosecute. Dkt. 67.

On December 18, 2012, plaintiff filed a response to the Report and Recommendation, requesting that the court dismiss this case without prejudice, contending that his former attorney "took all my exhibits and never returned them to me." Dkt. 68. Plaintiff maintains that he had no way to respond to questions from defendants. *Id.*

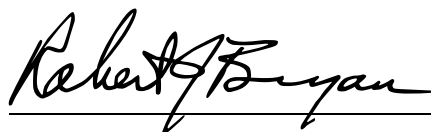
1 On January 8, 2013, defendants filed a response, contending that the court permitted  
2 plaintiff's counsel to withdraw, and ordered plaintiff to answer outstanding discovery by July 6,  
3 2012; that plaintiff failed to respond to the discovery and failed to respond to defendants' motion  
4 to dismiss and for summary judgment; that some of the discovery defendants requested did not  
5 require reference to documents that plaintiff's counsel allegedly failed to return to plaintiff; and  
6 that plaintiff failed to request any extension of time to respond to discovery or to respond to the  
7 motion to dismiss and for summary judgment. Dkt. 69. Defendants request that they are entitled  
8 to a speedy resolution of this case. *Id.*

9 Plaintiff apparently concurs that the case should be dismissed. He believes that the  
10 dismissal should be without prejudice. However, the reasons plaintiff has advanced for failing to  
11 comply with his discovery responsibilities, for failing to respond to defendants' motion to  
12 dismiss and for summary judgment, and for failing to participate in this case after his counsel  
13 was permitted to withdraw, are not sufficient. Dismissal without prejudice would not be fair to  
14 defendants, who are entitled to resolution of this case that was filed two years ago. The court  
15 should adopt the Report and Recommendation and dismiss this case with prejudice.

16 Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Dkt. 67) is  
17 **ADOPTED**. This case is **DISMISSED WITH PREJUDICE**. All pending motions are  
18 **STRICKEN** as moot.

19 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
20 to any party appearing *pro se* at said party's last known address.

21 Dated this 18<sup>th</sup> day of January, 2013.

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24 ROBERT J. BRYAN  
United States District Judge